OMX Agro Produce (M) Sdn Bhd v Chairman, Industrial Court, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25–57 OF 1998
KC VOHRAH J
29 JANUARY 1999

Labour Law — *Industrial Court — Award — Claimant dismissed from service by applicant — Industrial Court accepted evidence of claimant uncritically and found claimant dismissed without just cause — Application for award to be set aside — Whether chairman had erred in law in finding*

The claimant worked for a sibling company of the applicant company ('the company') as a consultant before he was employed by the company. The applicant had purchased 80 acres of land for a farm and had made it ready for leafy vegetable cultivation. The company then dismissed the claimant on the ground that he had failed to produce leafy vegetables. The claimant claimed that he was dismissed by the company without just cause or excuse and that his dismissal was motivated by malice and was an act of victimization. The chairman of the Industrial Court made a finding that the company had dismissed the claimant without just cause or excuse and held that he was entitled to claim backwages from the time he was dismissed. This court had to decide whether the chairman had considered all evidence before making such a finding.

Held, quashing the award by the chairman of the Industrial Court:

The chairman was under a duty to scrutinize all evidence and the pleaded facts and make a finding but he did not do so. What he did in his award was to narrate the evidence of the claimant and accept it uncritically (see pp 638I–639A). Further, he made a completely unjustified and irrelevant attack on the company for being greedy, something that was not pleaded and a finding not supported by the evidence. Another unjustified finding was that the company was exploiting the labour of the claimant. Exploitation of labour was not pleaded and it was a completely irrelevant consideration unsupported by the evidence. The chairman had erred in law on his findings as the grounds he relied upon appear to be one sided (see pp 639G–640A).

[Bahasa Malaysia summary

Pihak menuntut telah bekerja untuk syarikat yang mempunyai perkaitan dengan syarikat pemohon ('syarikat tersebut') sebagai perunding sebelum beliau bekerja dengan syarikat tersebut. Pemohon telah membeli 80 ekar tanah untuk sebuah ladang dan telah menyediakannya untuk penanaman sayuran hijau. Kemudian syarikat tersebut memecat pihak menuntut atas dasar bahawa beliau telah gagal untuk menghasilkan sayuran hijau. Pihak menuntut mendakwa

bahawa beliau telah dipecat oleh syarikat tersebut tanpa sebab-sebab atau alasan yang adil dan bahawa pemecatannya didorong oleh niat jahat dan merupakan suatu tindakan menjadikan beliau seseorang mangsa. Pengerusi Mahkamah Perusahaan telah membuat penemuan bahawa syarikat tersebut telah memecat pihak menuntut tanpa sebab-sebab atau alasan yang adil dan memutuskan bahawa beliau berhak untuk menuntut gaji terdahulu dari masa beliau telah dipecat. Mahkamah terpaksa memutuskan sama ada pengerusi tersebut telah mempertimbangkan segala keterangan sebelum membuat penemuannya.

Diputuskan, membatalkan award pengerusi Mahkamah Perusahaan:

Pengerusi tersebut adalah di bawah tugas untuk meneliti semua keterangan dan fakta yang diplidkan dan membuat penemuannya tetapi beliau tidak berbuat demikian. Apa yang beliau telah buat dalam awardnya adalah meneliti keterangan pihak menuntut dan menerimanya tanpa kritikan (lihat ms 638I–639A). Selanjutnya, beliau telah membuat serangan yang tidak boleh dijustifikasikan dan tidak berkaitan terhadap syarikat tersebut kerana tamak, sesuatu yang tidak diplidkan dan suatu penemuan yang tidak disokong oleh keterangan. Satu lagi penemuan yang tidak boleh dijustifikasikan adalah syarikat tersebut telah mengeksploitasikan tenaga kerja pihak menuntut. Mengeksploitasikan tenaga kerja tidak diplidkan dan ia adalah pertimbangan yang tidak berkaitan yang tidak boleh disokong dengan keterangan. Pengerusi tersebut telah membuat kesilapan daripada segi undang-undang atas penemuannya memandangkan bahawa beliau bergantung atas alasan-alasan yang berpihak kepada satu pihak sahaja (lihat ms 639G–640A).]

Notes

For cases on award of the Industrial Court, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 919–934.

Case referred to

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (refd)

Salleh Abas (*CH Lee* and *Megat Suffian Merican* with him) (*Salleh Abas Yaacob & Sofiah*) for the applicant.

Rohan Sankey (*Paul Chong & Kraal*) for the second respondent.

Cur Adv Vult

KC Vohrah J:

In this case, after having read the statement of the case of Ding Kong Heng and the reply of OMX Agro Produce (M) Sdn Bhd filed in respect of the reference to the Industrial Court and the notes of the proceedings of the

Industrial Court made in respect of the case I was quite surprised at the award given in the case and the reasons for the award. A

The court made a finding that the company had dismissed the claimant without just cause or excuse and held that he was entitled to claim backwages from the time he was dismissed.

Having heard the arguments of learned counsel of both the applicant and the second respondent and having gone through the record and other connected documents, my view is that the grounds relied upon by the chairman for making his award appeared to be one sided; he readily accepted the evidence of the claimant without testing it against other evidence and was content to rely on the 'I believe him' formula. The chairman did not come to grips with the issues raised in the pleadings and the distinct impression that one gets is that the chairman had lost himself in a thicket of irrelevant issues and evidence, loose and uncritical analysis of evidence and wrong inferences and one has to bear in mind the case of *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 which reiterates a long line of principles decided earlier that parties are bound by their pleadings and that the Industrial Court cannot consider or admit evidence which is irrelevant to the issues or reject evidence relevant to the issues and come to the wrong conclusion; the court must address its mind on fundamental issues. B C D

The claimant had claimed he was dismissed by the company without just cause or excuse and that his dismissal was motivated by malice and was an act of victimization. The company pleaded that he had failed to produce agricultural products from the farm within a stipulated time. Two other reasons were also pleaded but they have been abandoned. E

Was the claimant dismissed with just cause? It is not disputed that the claimant worked for a sibling company of the applicant company as a consultant before he was employed by the applicant company in March 1996. There is no dispute that about 80 acres of land in Dangi, Negeri Sembilan, had been purchased for a farm and that about 30 acres of the land were meant for vegetable cultivation. There is evidence from witnesses of the company that the company had had the land cleared by third parties and made ready for leafy vegetable cultivation by April 1996 after the infrastructure for it had been put in place. There is no dispute the leafy vegetables take about 28 days to harvest from the time the seeds are planted and that from April to July 1996 (the claimant left in July 1996), and the claimant admits so, no vegetables were produced during the four months. F G

The company's reason for the claimant's dismissal was that he had failed to produce leafy vegetables during the four months. The chairman, on the issue whether the dismissal was just, should have locked on to this issue and examined the evidence to see whether it was made out or that he had been dismissed without just cause and with malice and that he had been victimized. H I

The learned chairman is under a duty to scrutinize all these evidence and the pleaded facts and make a finding therein but he did not do so.

A What the chairman did in his award was to narrate the evidence of the claimant and accept it uncritically. The claimant had stated that it needed seven months before the land could be ready for planting with vegetables; readying the land was in two stages — the first stage taking five months and the second taking two months. The five months started from December 1995, according to him. That is to say by July 1996 when he left, the land B was not ready for vegetable planting. But the evidence of COW3 and COW1 was that the land was purchased in February or March 1996 and was cleared before April 1996 and the evidence of Dr Koshy Philip who assisted COW3 on bio-technology and related agro technology was that once the land was cleared, and it was cleared for vegetable growth in C February or March, it was ready for initial planting. Instead of weighing the evidence of the claimant and the evidence adduced on behalf of the company, the chairman uncritically stated that the claimant's evidence on the development of the farm was 'convincing' and that he 'had no doubt he was telling the truth'. He ignored the evidence of Dr Philip that regular meetings with the claimant were held once every two days in order to assess D the progress of vegetable planting and to get from him a planting schedule, to avail. The claimant denied regular meetings were held or that he was asked to plant within stipulated times. Dr Philip had a log book to show that there were meetings but the chairman wanted minutes and rejected the admission of the log book on the meetings. The chairman failed to deal with relevant issues and instead summarily rejected the evidence of Dr Philip by E stating that the claimant had told the court it was false and that he believed him and that Dr Philip should show minutes to the court.

What the chairman went on to do was to make a finding that the company had dismissed the claimant and that if the company 'had allowed the claimant to remain after July 1996 when the land was almost ready for F planting vegetables they would have to pay the claimant 30% of profit share as promised by COW3'. He continued: 'By doing so not only the company would receive less profit but also they were greedy, thinking only on business point of view.' As was pointed out he had not initially examined whether the land was ready for vegetable cultivation in April — he merely believed the claimant that it was ready in July without examining the G evidence of Dr Philip and COW3. And then having made such a finding, he makes a completely unjustified and irrelevant attack on the company for being greedy, something that was not pleaded and a finding not supported by the evidence. In accepting the allegation of the claimant that he was promised 30% profit although that was not pleaded in the statement of the case, clearly an error of law has been manifested.

H Another unjustified finding was that the company was exploiting the labour of the claimant in that when the company found the land was ready for planting 'they' just asked the claimant to go. Exploitation of labour was not pleaded and it was a completely irrelevant consideration unsupported by the evidence.

I It is unfortunate that the chairman has seriously erred in law on his findings. In fact, as early as the third paragraph of the award, he brought in a completely irrelevant matter which, so to speak, set the tenor of the

analysis of the evidence and the resultant findings. Referring to COW3 appointing the claimant as a consultant with another company before appointing him to the appellant company, he stated quite irrelevantly: 'He was paid consultancy fees (to avoid paying Employees Provident Fund as was adduced by the claimant)' and then he went on to make his one sided findings against the company.

It is quite clear the award is flawed and has to be set aside. The award of the chairman is accordingly quashed with costs.

Award quashed.

Reported by David Lai